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portion of the container, and an annular upper portion of the inner surface of the skirt inclined downwardly and outwardly relative to the outer surface of the annular sealing flange to form with the annular sealing flange an upwardly converging annular gap into which the rim of the container is wedged as the container engaging members on the closure and the closure engaging members on the container engage.

Montgomery discloses a package in which an annular flange 32 extends upward from a lip 30 on the neck 16 of a container. This annular flange 32 is molded to extend axially as shown in Figure 3. It is deformed upwardly and outwardly upon entering a gap formed between the downwardly and inwardly extending surface 38 on an annular inner skirt 36 of the closure and the downwardly and inwardly directed upper surface (no reference character) on the projection 40 on the inner surface of the outer skirt of the closure. This annular flange 32 takes a permanent set in this outwardly flared direction so that when the closure is removed from the container and reapplied, this annular flange engages the underside of the projection 40 preventing the container from being fully lowered onto the container neck, thereby providing an indication that the container has been opened.

Montgomery does not teach the arrangement called for in Claim 1. The Office Action in paragraph 4 asserts that Montgomery has a spout identified by the "element 16, above the closure-engaging member 28, which extends upwardly and inwardly in the area at 30 and 32 in figure 3". In order for a reference to anticipate a claim, it must disclose the identical invention in as complete detail as is contained in the claim. MPEP § 2131.

Claim 1, in pertinent part, calls for three elements: 1) an upper portion 7 of the container main body (on which the enclosure-engaging members threads 9 are located); 2) a spout 11 extending upwardly and inwardly from the upper portion; and 3) an upwardly and outwardly flared portion 13 topping the spout and terminating in a rim. The element 16 of Montgomery is the upper portion of the main body of Montgomery's container on which the closure engaging members (threads 28) are located. The threads of Montgomery are, of course, helical and the Office Action refers to Figure 3 wherein at the section shown is at the lowest point of the thread. Reference to Figure 5 shows that the thread extends essentially fully up the "upper portion" of the container. The "upwardly and outwardly flared portion" 32 is

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mounted directly on the "upper portion" 16 of the main body of the container. There is no spout above the upper portion of the main body in Montgomery. Clearly, the horizontal lip 30 does not correspond to the conventional definition of a spout. See, for instance, the attached definition of the noun "spout" from *Webster's New Twentieth Century Dictionary of the English Language* Unabridge, Second Edition, wherein "spout" is defined as "a nozzle, pipe, or projection (as on a teapot, sprinkling can, or pitcher), by which a liquid is poured or discharged. There is simply no spout in the Montgomery reference as called for in Claim 1. As Montgomery is lacking an element of Claim 1, a spout, it can not anticipate.

In addition, as pointed out in Applicant's Amendment and Response, dated February 13, 2003, Claim 1 also calls for:

sealing elements including an annular sealing flange extending downwardly and inwardly from the end wall of the closure . . . and an annular upper portion of the inner surface of the skirt being inclined downwardly and outwardly relative to the outer surface of the annular sealing flange to form with the annular sealing flange an upwardly converging gap into which the rim of the container is wedged . . .

Montgomery does not teach or suggest such an arrangement. While the outer surface of the inner skirt 36 of Montgomery extends downward and inwardly at 38, the upper surface of the projection 40 extends parallel to that surface on the inner skirt and not "downwardly and outwardly . . . to form an upwardly converging annular gap into which the rim of the container is wedged." The Examiner disagrees with this, asserting that the annular upper portion of the inner surface of the skirt "comprises elements 40 and 22" and that "[a]t the lower portion of element 22, which is considered to be part of the annular upper portion, the inside surface extends outwardly and downwardly until it converges with the inner surface of the skirt." In order for a reference to anticipate a claim, it must not only have each and every element of the claim, the elements must be arranged as required by the claim. MPEP § 2131. Claim 1 calls for the outer surface of the flange and the "annular upper portion of the inner surface of the skirt inclined downwardly and outwardly . . . to form with the annular sealing flange an upwardly converging annular gap into which the rim of the container is wedged". The downwardly and outwardly extending portion of element 22 does not form a gap with the outer surface 38 of the flange 36,

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let alone a gap into which of the rim of the container is wedged. This analysis constitutes a hindsight rearrangement of the teachings of Montgomery which is not permissible, and certainly does not support a rejection under Section 102(b).

Paragraph 6 of the Office Action challenges the analysis on page 3 of Applicant's Response of February 20, 2003. The cited section of Applicant's earlier response was directed to the second position of the closure in Montgomery relative to the container after the closure has been removed and replaced, as shown in Figure 5. As the current Office Action states at paragraph 9 that the initial closing operation and engagement of the Montgomery invention (shown in Figure 4) are used to meet the limitations of the rejected claims, the discussion of this configuration of the reference becomes moot. Suffice it to say, however, even in this configuration the lower portion of element 22 also does not, as suggested in paragraph 8 of the Office Action, form a gap with, but in fact is remotely spaced from the element 36.

Thus, Montgomery discloses a different structure which operates in a different way to achieve a different result than the package called for in Claim 1. Accordingly, Montgomery does not anticipate Claim 1.

Claims 2-4 and 10 were also rejected under 35 U.S.C. § 102(b). As all of these claims depend from Claim 1, they are not anticipated by Montgomery for the same reasons. Furthermore, Claim 10 calls for the sealing elements to further include an annular sealing member on one of the lower end of the inner surface of the skirt above the container-engaging members and the main body of the container above the closure-engaging members but below the spout sealing against the other. This is the seal 55 formed by the bead 57 (see Figure 2) on the lower portion 59 of the inner surface 27 of the skirt above the threads 31 sealing against the cylindrical upper portion 7 of the main body 5 of the container above the threads 9. Paragraph 10 of the Office Action asserts that the annular sealing member called for in Claim 10 "is considered to be element 22 which is located on the closure above the container-engaging members". While the element 22 in Montgomery is located on the closure above the container-engaging members it does not seal against the container at any point, let alone above the container-engaging members but below the spout. In addition, in paragraphs 5 and 8, it was asserted that the element 22 was part of the annular upper portion of the inner surface of the closure skirt. It is inconsistent and

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improper to now claim that this same element 22 is part of the "lower end of the inner surface of the skirt" as called for in Claim 10. In other words, in rejecting Claim 10, which incorporates all the limitations of Claim 1, element 22 was relied upon as constituting the downwardly and outwardly extending upper portion of the inner surface of the skirt to form a gap, and also as the annular sealing member on the lower end of the inner surface of the skirt. It is improper to find anticipation by using a single element in the reference as corresponding to two claimed elements in distinctly different parts of the claimed combination. Therefore, Claim 10 is not anticipated by Montgomery.

Claim 11 depends from Claim 10 and therefore is patentable over Montgomery for the same reasons.

Claim 12 is an independent claim which calls for, in pertinent part, a container with an upwardly and inwardly extending spout terminating with a rim, a closure having an end wall and a skirt extending outward and downward with container-engaging members adjacent a lower end of an inner surface of the skirt which engage closure-engaging members on the container, and sealing elements including a first sealing element forming a seal between the container and the closure adjacent the container opening, and a second seal comprising an annular sealing member on one of the lower portion of the inner surface of the skirt above the container-engaging members and on the main body of the container above the closure-engaging members but below the spout which seals against the other. Thus, Claim 12 calls for a seal at the top of the container and a seal between the lower portion of the skirt and the main body of the container below the spout but above the container-engaging members. As discussed in connection with Claim 1, Montgomery does not disclose a container with a spout. Furthermore, it does not disclose two seals, one at the top of the container, and a seal between a lower portion of the skirt and the main body of the container below the spout but above the container and closure-engaging members.

The Office Action relies on element 22 as comprising the second seal. Again, element 22 does not seal with anything and cannot at the same time be part of the upper seal and the lower seal. Accordingly, Montgomery does not anticipate independent Claim 12.

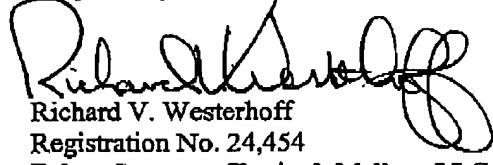
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Claim 13 depends from Claim 12 and is therefore patentable over Montgomery for the same reasons.

Claims 5-9, the claims identified as being allowable if rewritten, have not been rewritten as they depend from Claim 1, which as has been discussed, is patentable in its present form.

In view of all of the above, reconsideration and allowance of the application as now presented is respectfully solicited.

Respectfully submitted,



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